Supreme Court, U.S.
FILED
OCT 8 - 2004
OFFICE OF THE CLERK

No. 04-330

IN THE

Supreme Court of the United States

THOMAS LARIMER,

Petitioner,

v.

INTERNATIONAL BUSINESS MACHINES CORPORATION,
SUCCESSOR IN INTEREST TO
LOTUS DEVELOPMENT CORP.,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether this Court should grant review to interpret the association provision of The Americans With Disabilities Act of 1990 ("ADA"), 42 U.S.C. § 12112(b)(4), in the absence of a split of authority among the lower courts analyzing this provision and where the court of appeals properly affirmed the dismissal of Petitioner's claim on the ground that Petitioner had no evidence that he was discriminated against based on his association with any allegedly disabled individuals.

CORPORATE DISCLOSURE STATEMENT

Respondent International Business Machines Corp. ("IBM") is a publicly-traded New York corporation. IBM has no parent corporation and no publicly traded company owns 10% or more of its stock.

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RESPONDENT'S BRIEF IN OPPOSITION

The ADA's association discrimination provision prohibits "excluding or otherwise denying equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association." 42 U.S.C. § 12112(b)(4). In this case, the Seventh Circuit held that Petitioner Thomas Larimer ("Petitioner" or "Larimer") presented insufficient evidence to show that IBM terminated his employment based on his relationship with any disabled individuals where (1) Larimer could not show that the cost of health benefits for his allegedly disabled twin daughters was of concern to IBM, (2) the condition of prematurity and related medical afflictions of Larimer's twin daughters were neither communicable to Larimer nor predictive of his becoming ill or disabled, and (3) there was no evidence that Larimer was absent or distracted at work because of his daughters' alleged conditions. In affirming the district court's grant of summary judgment in favor of IBM, the Seventh Circuit's application of the ADA's association discrimination provision was entirely proper.

Petitioner attempts to create a circuit split by mischaracterizing both the nature and scope of the straightforward decision below. *First*, Petitioner errs in stating that the Seventh Circuit required that the disability belong to the plaintiff in an association discrimination case; a fair reading of the Seventh Circuit's opinion reveals that the circuit court reached no such holding. *Second*, the Seventh Circuit's interpretation of the ADA's association discrimination provision does not deviate from precedent of other courts that have interpreted that ADA provision. Moreover, even if this Court desires to interpret the association discrimination provision, this case is a singularly poor vehicle for doing so. The decision below was narrow and factbound and does not raise any important, unsettled

questions of federal law. The petition therefore should be denied.

STATEMENT OF THE CASE

A. Factual Background

Larimer was hired on August 28, 2000 as a Senior Sales Specialist in the Lotus Software Sales unit at IBM. (R. 31 ¶¶ 4, 6.)[1] As a Senior Sales Specialist, Larimer was responsible generally for selling Lotus software messaging and software knowledge management products to certain assigned accounts. (*Id.* ¶ 8.) From the beginning of his employment, Larimer fell short of meeting his sales goals and was informed by management of various deficiencies in his job performance. (*Id.* ¶¶ 11, 13, 14.) By the end of the first quarter of 2001, Larimer's total sales bookings were significantly lower than he projected (*id.* ¶¶ 21, 23) and in April 2001, Larimer admitted to his peers and supervisors at a regional sales meeting that he was not meeting his goals (*id.* ¶ 25).

Following relatively unsuccessful weekly meetings with Larimer in April and May 2001 designed to improve his performance (*id.* ¶¶ 27, 28, 30–32), Larimer was placed on a performance improvement plan on June 21, 2001 (*id.* ¶ 40). On August 17, 2001, Larimer was informed that he had not met all of the requirements of the performance plan and that his employment was being terminated. (*Id.* ¶ 61.)

Twins Emelia and Sarah Larimer were born on May 11, 2001 to Larimer and his wife, Juliann Larimer (also an IBM employee), at 28 6/7 weeks gestation. (*Id.* ¶¶ 70, 76, 77, 81,

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[1] IBM cites to the record from the district court as it was before the Seventh Circuit as "R. __" identifying the item by its number on the district court docket and providing a page or paragraph number if applicable.

88.) Emelia—who suffered a bleed in her brain after birth—was discharged from the hospital on June 26, 2001. (*Id.* ¶¶ 90–91.) Sarah—who had a hemangioma on her left nasal bridge—was discharged from the hospital on July 4, 2001. (*Id.* ¶¶ 90, 92.) Other than these afflictions and the prematurity and twin gestation of the children, the twins suffered from no other conditions after leaving the hospital. (*Id.* ¶¶ 91–92.) All developmental evaluations performed on the children through the time of summary judgment in this case demonstrated that the twins were developing normally. (*Id.* ¶¶ 93, 94–96, 101.) On September 10, 2001, Juliann Larimer voluntarily resigned her position at IBM in order to tend to the needs of her family. (*Id.* ¶¶ 78, 81.)

The Larimers received health insurance benefits through IBM's Self-Managed Plan ("Plan"). (*Id.* ¶ 108.) Empire BlueCross/BlueShield ("Empire")—the Plan's contract administrator—pays claims on behalf of participants and then submits requests to IBM to fund the claims. (*Id.* ¶¶ 108–09.) Larimer's managers had no information regarding Larimer's claims or medical bills (*id.* ¶ 110) and the amount of Larimer's claims did not affect, financially or otherwise, the management that employed and discharged Larimer. (R. 32, Ex. 53.) Through January 2003, IBM paid approximately $200,000 in medical bills for the twins. (R. 31 ¶ 111.)

Neither Larimer nor his family suffered any interruption in health insurance coverage as a result of Larimer's termination from IBM. (*Id.* ¶ 82.) Specifically, the Larimers were covered under the IBM health plan from the time of Larimer's hire through May 1, 2002, at which time they were covered under a health insurance plan through Juliann Larimer's new employer. (*Id.* ¶¶ 82–84.)

B. The Litigation In The Courts Below

On May 2, 2003, Larimer filed suit, alleging that he had been discriminated against based on his association with

persons with disabilities or perceived disabilities (i.e., his twin daughters) in violation of the ADA.[2] On April 29, 2003, the district court granted IBM's summary judgment motion and dismissed all of Larimer's claims against IBM. *See Larimer v. IBM*, No. 02-C-3160, 2003 U.S. Dist. LEXIS 7396 (N.D. Ill. April 29, 2003)/Pet. App. A-10–A-40. Regarding Larimer's ADA claim, the district court held that Larimer failed to show that his children had any long-term impairments that substantially limited major life activities while Larimer was employed at IBM or thereafter. (Pet. App. A-28–A-29.) Next, the district court rejected Larimer's argument that IBM regarded the children as disabled, holding that IBM management's knowledge of particular impairments of the children was insufficient to establish that IBM had a mistaken belief as to a substantial limitation on a major life activity. (*Id.* A-33.) Thus, because Larimer failed to establish that his children were disabled or that IBM regarded them as such, the district court granted summary judgment in IBM's favor on Larimer's ADA claim. (*Id.*)

On December 11, 2003, a three-judge panel of the Court of Appeals for the Seventh Circuit heard argument in Larimer's appeal of the district court's decision. On June 3, 2004, the court of appeals affirmed the district court's decision. (Pet. App. A-1–A-9.) In concluding that Larimer had presented no evidence that he was terminated because of his twin daughters' alleged conditions, the court of appeals described three categories of cases that in its view came within the intended scope of the "rarely litigated" association section of the ADA. (*Id.* A-4.) Relying on EEOC

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[2] Larimer also alleged that he had been terminated in violation of Section 510 of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1140, in retaliation for filing health claims relating to his twin daughters. (R. 1-1.) Because the ERISA claim is not the subject of the Petition before this Court, IBM does not discuss the lower courts' disposition of this claim.

Interpretive Guidance—contained in 29 C.F.R. § 1630.8, App. at 360—and case law from other circuits interpreting the ADA's association discrimination provision, the court of appeals identified the categories as "expense," "disability by association," and "distraction." (*Id.*) The court of appeals then provided the following "illustrations" of each: (1) "expense"; i.e., a dependent has a disability that is costly to the employer, (2) "disability by association"; i.e., the employee is likely to receive or develop the disability through contact or genetic transmission, and (3) "distraction"; i.e., the employee is inattentive at work because of the disability of a spouse or child. (*Id.*) Applying this interpretive analysis, the court of appeals concluded that Larimer's case fit none of the categories because (1) Larimer could not show that the cost of health benefits for his daughters was of concern to IBM, (2) the alleged conditions of Larimer's daughters were neither communicable to Larimer nor predictive of his becoming ill or disabled, and (3) there was no evidence that Larimer was absent or distracted at work. (*Id.* A-4–A-5.)

Petitioner did not seek rehearing or rehearing *en banc*, but filed a petition for certiorari to this Court on September 3, 2004.

REASONS FOR DENYING THE PETITION

I. LARIMER HAS MISSTATED CONCLUSIONS OF LAW MADE BY THE SEVENTH CIRCUIT

Larimer has misstated conclusions of law reached by the court of appeals in support of his request for review. Specifically, Larimer claims (at 9–10) that the court of appeals deviated significantly from established law when it purportedly held that Larimer "did not adequately establish his association claim because *he himself* was not disabled." Larimer goes on to argue at length that the court of appeals required—contrary to the ADA and the case law—that an

individual must be disabled in order to bring an association discrimination claim under the ADA. (Pet. 9–10.)

A fair reading of the decision of the court of appeals, however, confirms that no such conclusion was reached. Indeed, in attempting to define what it means to be a "qualified individual" entitled to protection under the ADA's association discrimination section, the court of appeals specifically *rejected* using the definition of a "qualified individual with a disability" that appears in the statute. (Pet. App. A-3.) Instead, the court of appeals held:

> The term "qualified individual" in that provision must simply mean *qualified to do one's job*, as assumed though nowhere discussed in the legislative history and the cases.

(*Id.*) (emphasis added) (citations omitted); *see also id.* A-6 ("A true parallel to *McDonnell Douglas* in the association setting would allow a prima facie case to be made out if the plaintiff, having shown that he was qualified in the sense of meeting his employer's expectations (not a 'qualified individual *with a disability*,' as we explained earlier) . . . .") (emphasis in original). Larimer clearly has misread and misinterpreted the circuit court's holding in this regard and the Petition should be denied insofar as it relies on a mistaken reading of the decision below.

II. THE SEVENTH CIRCUIT CORRECTLY ANALYZED LARIMER'S ADA ASSOCIATION CLAIM AND NO CIRCUIT SPLIT EXISTS

Larimer claims that the decision below creates a split in the lower courts regarding the proper way in which to analyze cases brought under the ADA's association discrimination provision and that the issue is significant enough to warrant this Court's review. A close examination of Larimer's arguments in support of this position and the circuit court's analysis confirms, however, that there is no

such split or issue and that Larimer has distorted the nature and scope of the decision below.

A. Larimer's Criticisms Of The Lower Courts' Conclusions Of Fact And Law Do Not Warrant Review By This Court

Larimer contends that the district court inappropriately concluded that his daughters were not disabled or regarded as disabled by IBM, that the circuit court wrongly concluded that the conditions of the twins were merely temporary, and that both courts failed to construe the facts in the light most favorable to Larimer. (Pet. 8–9, 10–13, 15–16.) The district court—relying on uncontroverted material facts—devoted a significant portion of its opinion to the question of whether the twins were disabled, or regarded as such, and concluded that they were not. (Pet. App. A-26–A-33.) The circuit court commented that Larimer's daughters "seem[ed] fine at present" and declined to address Larimer's regarded-as argument. (Pet. App. A-2–A-3.) Larimer's argument that these issues warrant review by this Court fails for several reasons.

First, the district court's conclusions are not properly the subject of a petition for a writ of certiorari to this Court. The provisions of Supreme Court Rule 10 on which Larimer relies in support of his Petition plainly speak to issues raised by a decision of a "United States court of appeals"—and not an underlying district court decision. Simply stated, Larimer's quibbles with certain specifics of the district court's decision are not properly examinable here.

Second, Larimer's arguments that the lower courts erred in concluding that the children were not disabled (or regarded as disabled) or inappropriately construed summary judgment standards are not issues that warrant this Court's review. Supreme Court Rule 10 specifically provides that a petition for a writ of certiorari "is *rarely* granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." Sup. Ct. R.

10 (emphasis added). As explained above, Petitioner has presented a highly exaggerated and misleading picture of what the Seventh Circuit held in this case. In fact, he ultimately admits (at 10–13) that his complaint boils down to a disagreement with the way that the lower courts applied the ADA's association discrimination provision to a set of specific facts to conclude that his three-month old twin daughters were not disabled at the time of his discharge. This Court, however, does not grant certiorari to resolve factbound applications of legal standards. *See Packwood v. Senate Select Comm. on Ethics*, 510 U.S. 1319, 1320–21 (1994); *Isumi Semitsu Kogyo Kabushiki Kaisha v. U.S. Philips Corp.*, 510 U.S. 27, 34 (1993). No exception is warranted here. The Seventh Circuit's conclusion that the twins were "fine" is on its face a narrow, factbound application of the ADA's association discrimination provision. And, even if the children were disabled, the Seventh Circuit concluded that Larimer cannot prevail because he could not show that IBM had a motive to discriminate against him, making any conclusion regarding disability not dispositive. (Pet. App. A-3, A-7.)

Moreover, the uncontradicted evidence confirms that Larimer's children are not disabled. According to the uncontroverted testimony of the children's treating physicians, the conditions of respiratory distress syndrome, "suspected" sepsis, and jaundice, from which the twins initially suffered after their births on May 11, 2001, all had been resolved by approximately June 21, 2001, and their apnea and bradycardia had been resolved by the time of their discharges from the hospital on June 26 and July 4, 2001. (R. 31 ¶¶ 90–92.) It is well-established that temporary conditions or impairments do not constitute disabilities within the meaning of the ADA. *See, e.g., Ogborn v. United Food and Commercial Workers Union, Local No. 881*, 305 F.3d 763, 767 (7th Cir. 2002) (depression that lasted just over eight weeks not a disability under the ADA). As to the conditions that remained—prematurity (Emelia and Sarah),

twin gestation (Emelia and Sarah), a hemangioma (Sarah), and a brain bleed and cyst (Emelia)—none of the children's treating physicians testified that these conditions constituted disabilities or that they substantially limited the children in any major life activity. (R. 31 ¶¶ 97–98, 101–02.) In fact, all of the developmental evaluations of the children confirm that the children's growth, neurological and physical assessments have been within normal limits. (*Id.* ¶ 92–104.) And, any "possibility" that the children will suffer from future complications and/or impairments is insufficient as a matter of law to state a claim for disability discrimination under the ADA. *See Sutton v. United Airlines, Inc.*, 527 U.S. 471, 482 (1999) ("Because the phrase 'substantially limits' appears in the Act in the present indicative verb form, we think the language is properly read as requiring that a person be presently—not potentially or hypothetically—substantially limited in order to demonstrate a disability.").

As to Larimer's argument that the district court inappropriately relied more on IBM's facts that Larimer's, Larimer himself effectively admitted approximately 100 out of 111 of IBM's factual statements. (R. 37.) Also, concerning the additional facts submitted by Larimer in opposing IBM's summary judgment motion, the district court appropriately concluded that many of those assertions were based on an inadmissible affidavit and unsupported by the evidence. (R. 41, 42.) Larimer's own "lawyer drafted affidavit" contradicted his deposition testimony and contained facts entirely lacking in foundation or personal knowledge. It is well-established that such assertions are unreliable and entitled to no weight at the summary judgment stage. *See Beckel v. Wal-Mart Assoc., Inc.*, 301 F.3d 621, 623 (7th Cir. 2002) ("Affidavits, though signed under oath by the affiant, are typically and here written by the affiant's lawyer, and when offered to contradict the affiant's deposition are so lacking in credibility as to be entitled to zero weight in summary judgment proceedings unless the affiant gives a plausible explanation for the

discrepancy."); *Drake v. Minnesota Mining and Manufacturing Co.*, 134 F.3d 878, 887 (7th Cir. 1998) (finding that conclusory allegations in co-worker's affidavit were correctly stricken).

Either way, Larimer's arguments that the lower courts erred in their factual findings or applications of summary judgment standards do not warrant this Court's review.

B. The Circuit Court's Decision Is Not In Conflict With Decisions Of Other Courts Of Appeals And There Are No Issues Raised By The Opinion Warranting This Court's Consideration

Petitioner attempts (at 8, 14–15) to present a material conflict with other circuits by arguing that the circuit court's decision deviates from the "standard association analysis" established by the Tenth Circuit Court of Appeals in *Den Hartog v. Wasatch Academy*, 129 F.3d 1076, 1085 (10th Cir. 1997), such that this Court's review of the issue is necessary to establish a firm and clear ruling on the ADA's association discrimination provision. This assertion, however, is incorrect. There is nothing in the decision below that conflicts with *Den Hartog*, or any of the decisions of other courts of appeals interpreting the ADA's association discrimination provision. In fact, a close review of the decisions of those courts of appeals—including the Seventh Circuit here—demonstrates that the courts of appeals are consistently and appropriately analyzing the ADA's association discrimination section and that there is no compelling issue that needs to be settled by this Court.

The court of appeals in its decision below held that, in its view, there are three types of situations within the intended scope of the ADA's association discrimination provision, which could be illustrated as follows: (1) "expense"; i.e., a dependent has a disability that is costly to the employer, (2) "disability by association"; i.e., the employee is likely to receive or develop the disability through contact or genetic transmission, and (3) "distraction"; i.e., the employee is

inattentive at work because of the disability of a spouse or child. (Pet. App. A-4.) In reaching this conclusion, the court of appeals specifically relied on the EEOC's Interpretive Guidance to the ADA's association discrimination provision that sets forth these very three examples at 29 C.F.R. § 1630.8, App. at 360. Significantly, the Tenth Circuit in *Den Hartog*, in explaining what in its view would be required to make out a case of discrimination under the ADA's association discrimination provision, discusses some of these very same examples, as noted by the court of appeals below. *See* Pet. App. A-7 ("Better to require, as *Den Hartog* does though not in precisely these words, that the plaintiff present evidence that his case falls in one of the three categories in which an employer has a motive to discriminate against a nondisabled employee who is merely associated with a disabled person."). In fact the Tenth Circuit in *Den Hartog* cited to and endorsed the *exact same* Interpretive Guidance relied on by the court of appeals below. *See Den Hartog*, 129 F.3d at 1085–86, n.6. It also referenced the concern expressed in the Committee Report of the House Committee on Education and Labor that an employer might decline to hire an individual with a relative with a disability based on an assumption "without foundation that the applicant will have to miss work or frequently leave work early or both . . . ." *Den Hartog*, 129 F.3d at 1082. Under such circumstances, Petitioner's argument that the Seventh Circuit, in relying on the EEOC's Interpretive Guidance to define the parameters of what constitutes unlawful conduct under the ADA's association discrimination provision, deviated from any standards set forth by the court of appeals in *Den Hartog* is erroneous.

Equally clear is the fact that several courts of appeals that have addressed and interpreted the ADA's association discrimination provision similarly have looked to and relied upon the EEOC's Interpretive Guidance setting forth the three above-mentioned illustrations of situations in which discrimination could occur. *See, e.g., Oliveras-Sifre v.*

Puerto Rico Dep't of Health, 214 F.3d 23, 26 (1st Cir. 2000) (relying on *Den Hartog*'s endorsement of the "three examples of forbidden association discrimination set out in [the EEOC's] Interpretive Guidance"); *Tyndall v. National Education Centers, Inc.*, 31 F.3d 209, 214 (4th Cir. 1994) (relying on the EEOC's Interpretive Guidance in the context of prohibiting discrimination based on a concern that an employee will miss work in order to take care of a disabled person); *Rogers v. International Marine Terminals, Inc.*, 87 F.3d 755, 760–61 (5th Cir. 1996) (same). Accordingly, Petitioner's attempt to characterize the court of appeals' decision below as a departure from the case law from other courts of appeals interpreting the ADA's association discrimination provision rings hollow.

Petitioner's claim of a circuit split fails for the additional reason that the court of appeals below endorsed the analytical framework for proving a case of disability discrimination defined by *Den Hartog*. The *Den Hartog* court held that a variation of the fourth prong of the prima facie case defined by the Supreme Court in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973), was appropriate in cases brought under the ADA's association discrimination provision, and that a plaintiff bringing an association claim establishes a prima facie case by showing that: "(1) the plaintiff was 'qualified' for the job at the time of the adverse employment action; (2) the plaintiff was subjected to adverse employment action; (3) the plaintiff was known by his employer at the time to have a relative or associate with a disability; (4) the adverse employment action occurred under circumstances raising a reasonable inference that the disability of the relative or associate was a determining factor in the employer's decision." *Den Hartog*, 129 F.3d at 1085. The court of appeals below noted that the *Den Hartog* test was "sound" and that the fourth prong of *Den Hartog* effectively requiring a plaintiff to present evidence that his employer had a "motive to discriminate" was preferable to the *McDonnell Douglas* requirement than

an individual simply show that he was replaced by someone not of the protected classification. (Pet. App. A-6–A-7.) The fact that the court of appeals also discussed the EEOC's Interpretive Guidance as helpful in determining what would constitute a reason to discriminate in no way raises a circuit split or creates inconsistent interpretations of the ADA's association discrimination provision.

It is clear that the *substance* of the *Den Hartog* standard has been—like it was in the decision below—consistently used, accepted and applied by the courts of appeals that have addressed the ADA's association discrimination provision outside of the Tenth Circuit. *See Oliveras-Sifre*, 214 F.3d at 26 (favorably citing certain requirements of the *Den Hartog* prima facie case); *Ennis v. National Ass'n of Bus. and Educ. Radio, Inc.*, 53 F.3d 55, 58–59 (4th Cir. 1995) (preceding *Den Hartog* but similarly requiring that the plaintiff present "some other affirmative evidence that disability was a determining factor in the employer's decision" as part of the fourth prong of the prima facie case); *Wascura v. City of South Miami*, 257 F.3d 1238, 1242 (11th Cir. 2001) (favorably citing adoption of *Den Hartog* standard by Eleventh Circuit in *Hilburn v. Murata Electronics North America, Inc.*, 181 F.3d 1220, 1230–31 (11th Cir. 1999)).

Petitioner (at 14) cites several cases—in addition to *Den Hartog*—in arguing that a split exists among the lower courts regarding the proper interpretation of the ADA's association discrimination provision. *Oliveras-Sifre* and *Hilburn*, as set forth above, and *Beck v. Dahn Corp.*, No. 96-1538, 1998 U.S. App. LEXIS 9709, at * 8 (10th Cir. May 12, 1998), however, follow the analysis of *Den Hartog*, which as noted, was effectively endorsed by the Seventh Circuit. The remaining cases, however, discuss—and apply—other holdings and dicta of *Den Hartog* and thus are not relevant here. *See Salley v. Circuit City Stores, Inc.*, 160 F.3d 977, 981 (3rd Cir. 1998) (relying on *Den Hartog*'s discussion of the accommodation obligations of an employer to an employee who is addicted to drugs or alcohol); *Rizzo v.*

Children's World Learning Centers, Inc., 213 F.3d 209, 212–13 n.2 (5th Cir. 2000) (citing *Den Hartog*'s requirement that whether a disabled individual is a direct threat is an affirmative defense on which the defendant ordinarily has the burden of proof); *EEOC v. Prevo's Family Market, Inc.*, 135 F.3d 1089, 1102 (6th Cir. 1998) (citing *Den Hartog* in dissenting opinion for the proposition that an independent medical examination is not required when available objective evidence as to whether a disabled individual constitutes a "direct threat" in the workplace is clear); *Humphrey v. Memorial Hospitals Ass'n*, 239 F.3d 1128, 1139–40 (9th Cir. 2001) (citing *Den Hartog* for the proposition that conduct resulting from a disability generally is considered to be part of the disability rather than a separate basis for termination).

Based on the foregoing, Petitioner's argument that the circuit court below somehow deviated from the legal principles relied upon by the *Den Hartog* court of appeals or other courts of appeals interpreting the ADA's association discrimination provision is wrong. The Seventh Circuit relied on the same Interpretive Guidance cited by the *Den Hartog* court to clarify what type of evidence must be marshaled by a plaintiff attempting to prove association discrimination under the ADA. It similarly cited the *Den Hartog* test as "sound" and did not in any way place itself in conflict with the consistent interpretations of other courts of appeals addressing this very issue. There simply is no unsettled question of law implicated by the decision below to be addressed by this Court. *See Bunting v. Mellen*, 124 S.Ct. 1750, 1752 (2004) (the absence of a direct conflict among the circuits supports the denial of a petition for writ of certiorari). The courts of appeals have been consistent in their interpretations of the ADA's association discrimination provision. Accordingly, this case presents no circuit split or other compelling reason justifying review by this Court.

CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted,

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